

appropriateness of sealing. Doc. No. 50, page 3 of 7. Holding an open hearing to discuss Kyndryl's confidential trade secret information, with the press and other third parties present as Cannady desires, would cause irreparable harm to Kyndryl.

As this Court has noted, the baseline presumption is that Court records should remain open to the public. However, this presumption should be overcome and the hearing should be sealed to the public if confidential or trade secret information will be considered and discussed.

There is a common law presumption that judicial records are open to the public. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); *see Jessup v. Luther*, 277 F.3d 926, 928 (7th Cir. 2002). This presumption may be overcome only by showing a compelling need to seal documents, such as if the court's files "have become a vehicle for improper purposes," **or if the documents in question reveal trade secrets** or could compromise someone's personal safety. *Nixon*, 435 U.S. at 598; *see, e.g., IDT Corp. v. eBay*, 709 F.3d 1220, 1223-24 (8th Cir. 2013) (finding a company's "confidential and competitively sensitive information" warranted sealing the complaint); *Goff v. Graves*, 362 F.3d 543, 550 (8th Cir. 2004) (recognizing the protection of a confidential informant as a compelling government interest justifying the reception of evidence under seal). Ultimately, in determining whether to seal documents, the Court must balance "the interests served [*3] by the common-law right of access . . . against the salutary interests served by maintaining confidentiality of the information sought to be sealed." *IDT Corp.*, 709 F.3d at 1223.

Smith v. City of Kansas City, 2023 WL 4919675 (W.D.Mo. 2023) (emphasis added).

The Eighth Circuit in *In re Iowa Freedom of Info. Council*, 724 F.2d 658, 661 (8th Cir. 1983), as with other cases, supports and authorizes closed hearings when trade secrets are involved.

In that case, the Court stated as follows:

[I]n the trade-secrets context, the requirement of prior findings justifying closure cannot be liberally applied without some modification. Trade secrets are a peculiar kind of property. Their only value consists in their being kept private. If they are disclosed or revealed, they are destroyed. Therefore, it makes no sense to say that a determination whether trade secrets are involved should be made in open court, with the hearing to be later closed only if the determination is that they are involved. For in order to make this very determination, the Court must consider the information that one of the parties claims constitutes a trade secret, and the damage to that party that may occur if the claimed secrets are revealed. We do not see, as a practical matter, how this kind of decision can be made without at least some

limited initial in camera consideration. We will insist, in future cases, that the in camera consideration be as strictly limited as possible. After initially hearing the objections to closure, the district court, if it considers the objections not well taken, should go into in camera session, and take testimony limited strictly to the issue of the existence of trade secrets and the damage that disclosure of those secrets might cause. If it determines that secrets are involved, it should then return to the courtroom, announce this determination, and state that the remainder of the proceeding will be conducted in camera. If it determines that secrets are not involved, it should of course return to the courtroom and conclude the case in open court.

WHEREFORE, Plaintiff Kyndryl, Inc. respectfully requests that this Court hold any hearing regarding the Motion to Show Cause under seal, and not open to the public, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

JAMES SOBBA, LLC

/s/ Matthew P. Clune

G. EDGAR JAMES MO# 49585

MATTHEW P. CLUNE MO# 54081

4435 Main Street, Suite 910

Kansas City, Missouri 64111

Telephone: (816) 623-0544

Telephone: (816) 623-0043

ejames@jamessobba.com

mclune@jamessobba.com

**ATTORNEYS FOR PLAINTIFF KYNDRYL,
INC.**

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to Defendant:

vnc@rocketmail.com

/s/ Matthew P. Clune

Attorney for Plaintiff Kyndryl, Inc.